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OFFICE OF PETITIONS

In re Application of
James Browning
Application No. 10/510,488
Filed: March 28, 2005
Attorney Docket No. MPA-003

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.78(a)(6), filed April 22, 2008, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **DISMISSED AS MOOT.**

The petition is accompanied by an amendment to the first sentence of the specification following the title to include a reference to the prior-filed provisional application. While a reference to the prior-filed provisional application was not included in an Application Data Sheet (ADS) or in the first sentence of the specification following the title as required by the rules, a reference, nevertheless, was made in the declaration filed on March 28, 2005.

Where a claim for priority under 37 CFR § 1.78(a)(6) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR § 1.78(a)(5)(ii). On the other hand, if the USPTO does not note the claim for priority to the prior-filed application set forth in the oath or declaration or transmittal letter, a petition will be required to accept a late claim for priority under 37 CFR § 1.78(a)(6).¹ In the present case, the Office noted the claim for priority to the prior-filed provisional application in the declaration filed on March 28, 2005, as shown by its inclusion on the filing receipt mailed November 10, 2005.

¹ Note MPEP 201.11 (III)(D) and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

In view of the above, the \$1,410 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

This application is being referred to Technology Center Art Unit 3735, for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 119(e) to the prior-filed application.

Any questions concerning this decision on petition may be directed to the undersigned at (571) 272-3226. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.



Andrea Smith
Petitions Examiner
Office of Petitions